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NOT TO BE PUBLISHED



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Modoc)

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>DANIEL AUSTIN SNOW,<br><br>Defendant and Appellant. | C086994<br><br>(Super. Ct. No. F17180) |

Convicted after bench trial of assault by means of force likely to cause great bodily injury (GBI) (count one; Pen. Code, § 245, subd. (a)(4)),[1] inflicting corporal injury on a spouse or cohabitant (count two; § 273.5, subd. (a)), and battery causing serious bodily injury (count three; § 243, subd. (d)), and found to have personally inflicted GBI as to counts one and two (§ 12202.7, subd. (a)), defendant Daniel Austin Snow contends he suffered ineffective assistance of counsel. We affirm.

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[1] Undesignated statutory references are to the Penal Code.

## FACTUAL AND PROCEDURAL BACKGROUND

The victim, S.G., testified that as of June 13, 2017, she and defendant had lived together for two and a half years in Alturas, along with defendant's two children from a prior relationship, S.G.'s son from a prior relationship, and a daughter who was the child of S.G. and defendant. However, they were in the process of breaking up; defendant had agreed to move out with his children, while S.G. would stay in the residence.

On June 13, 2017, defendant and S.G. began to argue about a cell phone. She had loaned the phone (bought before the relationship began) to defendant, who put his own SIM card inside it. When she saw the cover was missing, she told defendant to take his SIM card out and give her the phone back, then get a new phone later. Defendant instantly became enraged and tried to rip the phone out of her hand; she held on tightly. They began to struggle as they stood outside on the back porch. Defendant put his hands on her wrists and seemed to be trying to throw her down the hill; her footing was unstable because she was barefoot, while he was wearing army-style boots.[2]

As the struggle continued, they moved from the back porch to the side of the house, and then to the front, where their cars were parked. The force of defendant's grip bruised S.G.'s wrists and forearms, as shown in photographs offered in evidence. Defendant finally ripped the phone out of S.G.'s hands, then went to his car.

S.G. jumped in through the open driver's side door and sat on defendant's lap sideways to keep him from starting the car. Both of them were mad and yelling. She ordered him to return the phone, saying it was her property. He somehow moved both of

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[2] In his own case, defendant called a deputy sheriff who testified that he found the boots defendant was supposedly wearing on the date of the crimes at S.G.'s residence several weeks later, when defendant returned under police escort to reclaim property, even though he had not gone back to the residence after assaulting S.G. or at any time afterward.

them over onto the front passenger seat, opened the passenger door, and pushed her out onto the ground, causing bruising to her "butt" and "upper hip."

As S.G. lay on the ground, defendant got out of the car and "stomped" her. She remembered one impact, but there could have been more than one; the first one put her "out of it," sick and dizzy and unable to stand up. She felt severe pain in her abdomen, and her collarbone "felt like [it] was sticking out." Knowing she had been seriously injured, she cried out: "Why did you do this to me, why?"

Defendant leaned over and took S.G.'s hand, then let her fall. She hit her "kidney area on the side rail part of the vehicle, and fell back down again." As it appeared he was going to hit her again, his dog came over, started barking at him, and nipped at his ankles. She commanded the dog to "get him." Defendant stepped back, took the SIM card out of the disputed phone, handed the phone to her, and said: "There you go. Are you happy now?"

After making her way up onto her feet, S.G. entered the house, fell on her bed, and could not get up; she thought she was dying. Her mother, her sister, and a neighbor called law enforcement. She was taken to the hospital, where her treatment included the removal of her spleen.

Dr. Kent Brusett, the cardiothoracic surgeon who operated on S.G., stated that there was a large amount of blood around the spleen and a laceration involving the spleen, not uncommon in cases of trauma to the abdomen. It took "a fair amount of trauma" to produce such an injury to the spleen. A simple fall would not do it, but stomping on the abdomen could cause the spleen to rupture.

Dr. Julia Mooney, a general pathologist who examined S.G.'s spleen after it was removed, stated that it "was enlarged and had ruptures of the capsule, and a lot of hemorrhage within the splenic parenchyma." There was no evidence of chronic disease in the organ. The level of trauma required to produce such injury to the spleen was consistent with falling off a building, not with "just fall[ing] down."

Defendant testified in his own defense. According to him, the cell phone in dispute was his property because he had possessed it for a year, had bought S.G. a replacement phone, and had transferred some pictures from that phone to the new phone. However, he handed it to S.G. when she asked him to do so. He invited her to look through its contents with him so that she could see there was nothing on it she would not like, but she said: "[T]hat's not how it works." When she refused to let him watch as she inspected it, he asked her to return it to him. Finally, he said he would ask her politely once more, and if she did not give it back he would take it. Matching actions to words, he did so, then started to walk away. Aside from defendant's belief the phone was his, he did not want to strip out the SIM card and hand S.G. the phone because he was about to undertake a long drive in a car he did not trust and did not want to be without a phone if the car broke down en route.

According to defendant, as he attempted to walk away, S.G. grabbed his sweatshirt, slammed him against a wall, and tried to wrest the phone away from him. She also reached down with a cigarette in her mouth and burned the top of his wrist. He pushed her back to get away from the wall, then walked quickly to his car. She tried again to throw him against the wall or pull him back, but he succeeded in getting into the driver's seat of his car.

As defendant tried to start the car, S.G. jumped onto his lap, wrapped her arm around his head, reached down, and grabbed the phone. He turned off the engine and pulled out the ignition key. They fell over to the passenger seat. He opened the passenger side door and crawled out; S.G. came with him. They fell to the ground at about the same time. She had her arm around his neck to the point where he was starting to lose his breath. All the while, he was yelling at her to "please stop." He did not intentionally knock her to the ground or stomp on her with his boots.

Eventually, defendant gave S.G. the cell phone to stop her from trying to disable the ignition on his car. As she returned to the residence with the phone, he drove away.

Defendant surmised that S.G. might have suffered injury to her spleen when she hit the steering wheel or the gear shift knob, when he fell on top of her as they fell out of the car, or when he hit her with his knee or elbow as he tried to get up from the ground.

The trial court found:

"Obviously, this case, from my perspective, is about weighing credibility of the victim and the [d]efendant. That's really what it boils down to in this case, because . . . that's the only inconsistent presentation that I have.

"And there's clearly a discrepancy in their respective testimony, certainly, regarding the ultimate issue of how the victim suffered her injuries. There's no question about that.

"As to the issue of the right to defend one's property, based on the evidence . . . I would agree that at some point during the incident on June 13th, both the victim and the [d]efendant had at some point a right to use force, using the theory that the property was really mixed with the SIM card belonging to one and the phone belonging to the other.

"But the key on that point is that both, at the point in time[] when they did have the right to use force, it's reasonable force . . . .

"As to the boot issue, I agree, the relevance . . . , to the extent it is relevant, . . . has to do . . . with balancing again or weighing credibility. And based on the evidence, and not withstanding the victim's testimony, I believe that the [d]efendant was not wearing boots at the time of the incident and agree that this somewhat reflects on the accuracy of the victim's testimony.

"However, the victim's testimony was very consistent in many other respects. And so that, in and of itself, doesn't make me feel like I have a not-credible victim.

"The ultimate issue in this case is whether [d]efendant caused the injury to the spleen, and if so, whether that falls within the right of reasonable force to protect property.

"Based on the expert testimony that we had, it's my belief that the blunt force trauma necessary to rupture the spleen is beyond the kind of force that could have been inflicted inadvertently or accidentally . . . .

"And this leads the Court to conclude that the victim truthfully testified that she was stomped, as that is the only plausible explanation for the extent of the injuries, and . . . I don't think there's any dispute that the injuries themselves constitute serious or great bodily injury."

Based on those factual findings, the trial court determined that defendant was guilty on all counts and the GBI allegations were true.

DISCUSSION

Defendant contends trial counsel was ineffective in two ways: (1) failing to object to the prosecutor's statement in closing argument that defendant was a liar, and (2) failing to impeach S.G.'s testimony with her prior testimony at the preliminary hearing. We disagree.

To win reversal for ineffective assistance of counsel, a defendant must show both deficient performance and resulting prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 691-692 [80 L.Ed.2d 674, 693, 696] (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 216-218.) Prejudice means a reasonable probability, i.e., a probability sufficient to undermine confidence in the outcome, that the defendant would have achieved a better result if counsel had not been deficient. (*Strickland*, at pp. 693-694 [80 L.Ed.2d at p. 694]; *Ledesma*, at pp. 217-218.) If a finding of lack of prejudice is the simplest way to resolve an ineffective assistance claim, the appellate court need not determine whether counsel's performance was deficient. (*Strickland*, at p. 697 [80 L.Ed.2d at p. 699]; *In re Fields* (1990) 51 Cal.3d 1063, 1079.)

Here, the key issue was simple: how did the victim suffer a ruptured spleen? According to her, it happened when defendant stomped on her abdomen as she lay on the ground. According to him, it happened in one of several other possible ways.

The prosecutor produced two medical experts who opined that the victim's injury happened in a manner consistent with her testimony, and inconsistent with defendant's speculation (unsupported by expert opinions or other corroborating evidence) that it was caused by falling from a car seat to the ground, or bumping into some part of the car's interior, or an accidental passing collision with defendant's knee or elbow. The trial court did not need to find the victim's story more credible than defendant's on all points in order to resolve that simple issue adversely to him based on the weight of the evidence; the medical testimony was overwhelming. That finding, in turn, compelled the verdict the court rendered on all counts and allegations. There is no reasonable probability defendant would have obtained a better outcome had his counsel successfully objected when the prosecutor called him a liar, or had counsel cross-examined the victim on discrepancies between her preliminary hearing testimony and her trial testimony. Therefore, we need not decide whether counsel's performance was deficient in either respect. (*Strickland, supra*, 466 U.S. at p. 697 [80 L.Ed.2d at p. 699]; *In re Fields, supra*, 51 Cal.3d at p. 1079.)

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

BUTZ, J.

MURRAY, J.